Mr. Mearle R. Donica, Director  
Vocational & Adult Division  
600 Old Trails Building  
309 West Washington Street  
Indianapolis, Indiana

Dear Mr. Donica:

Your recent request for an Official Opinion presents the following two questions:

"1. Should the State Board of Vocational and Technical Education handle funds and set up a fiscal administration for expending same as of January 1, 1966?"

"2. Do state funds appropriated for vocational and technical education to the State Superintendent of Schools' Office, division of vocational education remain under the jurisdiction of the State Superintendent's Office as of January 1, 1966, or should they be transferred to the State Board of Vocational and Technical Education as of that date?"

The answers to these questions will be dealt with separately hereinafter.

In answer to your first question, Acts 1965, ch. 244, as found in Burns IND. STAT. ANN., (1965 Supp.), §§ 28-4951—28-4953, specify the functions, duties and powers of the State Board of Vocational and Technical Education. Nothing in this act indicates that the State Board of Vocational and Technical Education (hereinafter sometimes referred to as the Board) will handle funds, other than to receive those available for vocational education from the Federal Government and to "divide and distribute such funds between the commission on general education of the Indiana state board of education and the board of trustees of the Indiana vocational technical college."

Board, Department or Agency to cooperate with the Federal Government for the purpose of securing Federal Assistance and grants to the State under Acts of Congress. However, the approval of the Governor is required by the above statute.”

1951 O. A. G., # 38, pp. 106-107

The above 1951 Opinion of the Attorney General also concludes with the following:

“In this State all funds payable to the State of Indiana for public purposes must be paid or turned over to the Treasurer of State and his authority is fixed and governed primarily by the provisions of Sections 49-1801 to 49-1817, Burns 1951 Replacement. In my opinion he would be the officer authorized to receive any Federal grants under the above mentioned Federal Law, for the use of the administering state agency.”

Further, Acts 1959, ch. 138, Burns IND. STAT. ANN., (1964 Repl.), §§ 49-1808 and 49-1809 sets out the procedure to be followed in depositing funds with the Treasurer of State, and expressly prohibits said Treasurer from paying out or transferring “any money from the Treasury of State, except upon the warrant of the Auditor of State” who must require the following of a specified accounting procedure.

By Acts 1965, ch. 191 and ch. 192, the appropriations acts, no state funds were appropriated for the specific use of the Board itself although funds were appropriated for vocational education through the State Superintendent of Public Instruction.

From the foregoing it appears to be the apparent intention of the Legislature to require the State Department of Public Instruction to supervise the actual expenditures from the state appropriated account. Further, by the expression of the Legislature that the Board is to receive Federal Funds for vocational education and to divide same between the general commission on education and the Technical College, it appears as though it was the intention of the Legislature to require the commission on general education to actually
supervise the expenditure of any Federal Funds for vocational education distributed to it by the Board. Also by the acts herein cited, it would appear that the Board is not required to hold any funds except for the purpose of distribution to other agencies of state government and that this latter may be accomplished by requesting the Auditor to transfer funds from the treasury of the state as same are needed for vocational educational purposes to be expended by the commission on general education.

In answer to your second question, asking whether state appropriated funds for vocational and technical education should be transferred from the jurisdiction of the State Superintendent of Schools to the State Board of Vocational and Technical Education as of January 1, 1966, I present the following for your consideration.

State appropriations under Acts 1965, ch. 191, (page 421) the General Appropriations Act, specify funds "For the Superintendent of Public Instruction-Vocational Education."

I find nothing in Acts 1965, ch. 244, as found in Burns IND. STAT. ANN., (1965 Supp.), §§ 28-4951—28-4953, creating and setting out the powers of the Board which reflect that it was the intention of the Legislature to completely separate the administration of the vocational education programs from the jurisdiction of the State Department of Instruction and to create a separate agency of state government therefor. Acts 1965, ch. 244, supra, does divest the former State Board of Vocational Education of its powers and duties and transfers them to the new State Board of Vocational and Technical Education which as of January 1, 1966, becomes the designer of all state and federal plans for vocational education within the state of Indiana and which also becomes the policy making board for vocational education matters within the state of Indiana. By said acts the new director is employed within the public school system by the Board and that director receives his orders from the new Board. However, by the act itself, the director will not receive available Federal funds directly from the Board, but through the commission on general education and presumably he will be paid by the State Department of Instruction. Likewise all state appropriations
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for vocational education must be expended in accordance
with the wishes of the new Board, but the funds will be re-
quested from and received through the State Superintendent
of Public Instruction, to whom said funds were appropriated
for the stated purposes.

Acts 1947, ch. 279, as found in Burns IND. STAT. ANN.,
(1961 Repl.), § 60-1827, provide in part that "the State Board
of Finance may transfer . . . appropriations . . . for one
(1) specific use or purpose to another use or purpose of any
officer or agency so long as the use and purpose to which it
is transferred, assigned or reassigned is a use or purpose
which the officer or agency is required or authorized to per-
form."

In a 1959 O. A. G., # 57, pages 275-295, the following ap-
ppears at page 290:

"This 1947 Act is repetitious of the power given
said board by Acts of 1941, Ch. 27, Sec. 5, as found
in Burns' (1951 Repl.), Section 60-314. Several Opin-
ions have also been issued dealing with the subject of
a transfer of funds. 1924 O. A. G., page 499; 1936
O. A. G., page 255; and 1945 O. A. G., page 557, all
have considered the problem of transferring funds
from one purpose to another and the conclusion was
that the Board of Finance did have such power. In
each instance the statute allowing the transfer was
read in conjunction with the provisions of the appro-
priation act which created the funds under considera-
tion. Obviously a specific limitation on transfers in an
appropriation act would prevail over the general trans-
fer authority given the Board of Finance by Burns' 60-1827. . . ."

From the foregoing, if it were determined as necessary to
transfer the state appropriations for vocational education
from the State Superintendent of Schools to another agency
to be used for the same purposes, such could be accomplished
by the State Board of Finance.

However, Acts 1965, ch. 244, supra, creating the Board of
Vocational and Technical Education does not specify whether
such funds should be transferred or not. That Board is to
transfer Federal Funds received for vocational education within the public school system to the general commission on education. Obviously the State Superintendent of Public Instruction is the elected executive head of the State Department of Public Instruction and as such he is the Chairman of the State Commission on General Education by Acts 1945, ch. 330, as found in Burns IND. STAT. ANN., (1948 Repl.), § 28-405. By Acts 1865, ch. 1, as found in Burns IND. STAT. ANN., (1948 Repl.), § 28-303, "the superintendent shall be charged with the administration of the system of public instruction and a general superintendence of the business relating to the common schools of the state and of the school funds and school revenues set apart and appropriated for their support." The foregoing duties and responsibilities of the State Superintendent of Schools have not been limited by later statutes, although Acts 1965, ch. 244, supra, has destroyed the authority of the State Board of Vocational Education and the general commission on education over vocational education programs in the public school system. The latter act, however, does not destroy the authority of the general commission on education and/or the State Superintendent of Public Instruction to act as trustees over funds to be expended by the Department of Vocational Education as per the instructions of the Board of Vocational and Technical Training.

Thus in summary, it is my opinion in answer to question one that it is not mandatory or required that the State Board of Vocational and Technical Education employ a fiscal administrative officer, personnel and procedure to expend and account for funds as of January 1, 1966, and that the expenditure and accounting of such funds for vocational education could and may continue through the State Department of Education and by the use of its staff as required of it by the Board. Further in answer to your second question, State appropriations for vocational education to the State Superintendent of Public Instruction may remain under his jurisdiction and need not be transferred to the Board of Vocational and Technical Education.